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Mark R. Kirkland

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EXAMINER

THAKUR, VIREN A

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,252	<b>Applicant(s)</b> KIRKLAND, MARK R.	
	<b>Examiner</b> VIREN THAKUR	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13, 16-24, 26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16, 23, 24, 26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2009 has been entered.

### ***Response to Amendment***

2. As a result of the amendment to the claims, the rejection of claims 1-6, 8-13 and 16-17 under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement has been withdrawn.
3. As a result of the amendment to the claims, the rejection of claims 1-6,8-9 and 23-26 under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement, has been withdrawn.
4. As a result of the amendment to the claims the rejection of claims 1-6, 8-13 and 16-17 under 35 U.S.C. 112, second paragraph has been withdrawn.
5. As a result of the amendment to the claims, the rejection of claims 23-24 under 35 U.S.C. 102(b) as being anticipated by Bezek et al. (US 6472007) has been withdrawn.

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6. The rejection of claim 23 under 35 U.S.C. 103(a) as being unpatentable over the over Warner in view of Savage et al. and Kirkland has been withdrawn as a result of the amendment to claim 23, reciting one non-food product in the combination. Also as a result of the amendment to claims 23, the rejection of claims 23-24 as being unpatentable over Rea et al. in view of Nedblake Jr., Bezek and Yu has been withdrawn. Also, the rejection of claims 23, 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of Kirkland has been withdrawn as a result of the amendment to the claims.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 23-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 23 recites the limitation “consumer selected products.” This limitation is new matter, especially since applicants’ invention is disclosed to be a pre-packaged vendable combination of products, and since

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applicants do not have support for the consumer selecting the products to be packaged into the vendable combination.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**10. Claims 1-6,8-13, 16-17, 23-24, 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1 and 10 recite the limitation “main container portion” however; the claims do not recite whether this means that there is any additional portion to the container. Both claims 1 and 10 do not positively recite any additional compartments or sections to the package. Furthermore, it is noted that claim 10 recites the limitation “at least two disparate non-beverage food products contained within said container, one of which is a sandwich like product that is sized to conform to a main container portion of said unitarily sealed enclosure which comprises the greater portion of said cylindrical container. This claim appears to be missing essential elements since it is not clear as to where the second of the disparate non-beverage food products would be contained. Therefore, claims 1 and 10 appear to be missing an essential elements.

Claim 10 further recites the limitation, at least two disparate non-beverage food products contained within said container, one of which is a sandwich-like product.” This limitation is not clear as to what “one” refers to.

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Claims 16 and 17 recite the limitation "said other separable compartment." This is insufficient antecedent basis for this limitation in the claims.

Claim 17 recites the limitation "wherein at least one of said disparate food products is a beverage contained in said other separable compartment." It is noted that claim 10 recites "at least two disparate non-beverage food products contained within said container." Therefore, it appears that claim 10 recites that the container comprises non-beverage products and as such, claim 17 appears to contradict claim 10 by reciting that one of said disparate food products is a beverage.

Claim 23 recites the limitation "at least two consumer-selected products." It is not clear as to what is meant by consumer-selected products since the claims are directed to a prepackaged combination which is subsequently vendable.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**13. Claim 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner (US 2384863) in view of Savage et al. (US 2003001036) or vice versa, Savage et al. in view of Warner, both in further view of Kirkland (US 6006945).**

Regarding the rejection employing Warner as the primary reference, it is noted that Warner teaches the concept of a packaged food product, which is not a beverage being vended from a vending machine that also vends beverage products. (Page 1, Right Hand Column, Line 54 to Page 2, Left Column, Lines 9-22). Regarding the container, Warner teaches wrapping sandwiches with a napkin and then placing inside a cardboard cylinder (Page 2, Right Hand Column, lines 4-12).

Warner is silent in explicitly teaching wherein the package is completely enclosed with a top bottom to form a sealed container.

Nevertheless, Warner further teaches that the food may be held by friction within the cardboard container, or the cardboard container can also include removable ends (Page 2, Right Hand Column, Lines 15-19). Therefore, the product would have been sealed within a cylindrical container.

Additionally, however, Savage et al. is relied on to teach the conventionality of sealing a vendable sandwich-like product (Paragraph 0060 and 0069). Therefore to close the ends of the receptacle holding the sandwich like product of Warner would have been obvious to the ordinarily skilled artisan for the purpose of protecting the food product from contaminants.

Claim 1 further differs from Warner and Savage et al. in reciting an opening mechanism for breaching the sealed enclosure.

Kirkland similarly teaches using a pullback tab (Figure 1) and further teaches other opening mechanisms as shown in Figure 4 and a pulling strip (Column 4, lines 42-48) which can be used with plastic or cardboard containers (Column 5, lines 9-11). Kirkland teaches that it has been conventional in the art to package a vendable container wherein the opening mechanism for accessing the contents is located at a position other than on the top or the bottom of the container (figure 4). Also, Savage teaches that it was conventional to package a product wherein the opening mechanism is on the side of the package, and thus not on the top or bottom (figure 3, item 120). The prior art thus teaches the conventionality of opening mechanisms to access the contents of the product contained therein. Therefore to use a particular opening mechanism, such as a tearing strip (Figure 4, item 34 of Kirkland) would have been an obvious matter of choice and/or design to one having ordinary skill in the art, for the purpose of facilitating opening of the sandwich of modified Warner.

Regarding the new limitation to claim 1 of cylindrical container “being structures with a main container portion that comprises a majority of the dimension of the cylindrical container and is sized to receive a sandwich-like product” it is noted that both Warner and Kirkland teach enclosed cylindrical containers used to hold products. Regarding the unitarily sealed enclosure, it is noted that Warner (as discussed above), Savage (figure 1 and 2) and Kirkland (figure 1, for instance) teach unitarily sealed containers.



Regarding instant claims 2-4, the sandwich of Warner comprises a bread like portion and a filler, which are in contact and would inherently have a shelf life of between 0 and three years.

Regarding the use of Savage et al. as a primary reference, it is noted that Savage et al. teaches a unitary container with a seal (figure 2) wherein the main portion of the container holds a non-beverage food product. It is noted that Savage et al. already teach that the container is vendable. Savage et al. mentions vending the package but is silent in vending the non-beverage food product in a vending machine that can vend beverages as well. Warner has been relied on to teach the concept of vending packaged sandwiches, such as hot-dogs, in vending machines that can also vend beverages. To therefore vend a packaged sandwich-like product, such as a hot dog within a vending machine that also vends beverages would therefore have been obvious to one having ordinary skill in the art, since Warner already teaches that such packaged products are vendable. Regarding the particular shape of the container, Savage et al. are silent in this regard. Nevertheless, both Warner et al. and Kirkland teach employing cylindrical containers for packaging food products that can be vended. To therefore modify the container taught by Savage et al. and employ a particular shape, such as a cylindrical shape would therefore have been an obvious matter of choice and/or design.

Regarding claims 2-4, Savage et al. teaches a bread like portion and a filler, which are in contact and the product would also have had a shelf life of up to three

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years. It is noted that the limitation up to three years recites a range of from 0 to 3 years.

**14. Claims 1-4, 6, 8-13, 16, 17, 23-24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nedblake Jr. (US 5664671) in view of Bezek et al. (US 6472007), Yu (US 5279841), Brabson (US 6415940) and Kirkland (US 6006945) and in further view of Pinyot (US 6971521), Kimball (US 20020176914), Warner et al. (US 2384863), Sierk et al. (US 2959339) and Savage et al. (US 20030071036).**

Claims 1-4, 6, 8-11, 13, 16, 17, 23-24 are rejected for the reasons given in the previous Office Action, mailed October 28, 2008. It is noted that claim 12 was not included in the rejection in the previous Office Action, however, upon reconsideration, claim 12 has been rejected for the reasons given below.

Claims 1 and 10 newly recite the limitation of the cylindrical container "being structures with a main container portion that comprises a majority of the dimension of the cylindrical container and is sized to receive a sandwich-like product, said main container being defined by a non-beverage food product enclosing cylindrical portion." Claims 1 and 10 further newly recites that the "sandwich-like product" is contained "within said main container portion."

It is noted that Nedblake Jr. teaches two disparate food products, with a sandwich like product in a compartment of the combination, but appears silent as to the "main compartment" comprising the sandwich like product.

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It is noted however, that Nedblake Jr. provides the generic teaching of providing a combination of products within a container assembly wherein both products can be separately contained but simultaneously vended when one selects the combination. Furthermore, it is noted that Bezek et al. teach a “main compartment” comprising the food product to be consumed, with the smaller compartment comprising a second food product into which the main food product is dipped, for instance (See figure 9b and 9c). Bezek et al. even teaches that the combination can be vended (column 3, lines 47-54) and wherein the shape of the container is cylindrical. Additionally, Yu also teaches that in figures 5a-5b containers that can be vended which also comprises a main compartment and a smaller compartment and wherein the compartments can comprise food or drink (column 6, lines 43-50). Brabson also teaches the concept of packaging multiple non-beverage food products within a container (column 7, line 52 to column 8, line 4). Therefore, the concept of cylindrical containers having a main portion and a smaller portion, as well as cylindrical containers that package sandwich-like products with a second complimentary product and cylindrical containers that can package multiple non-beverage products, which are compartmented have all been taught by the prior art. In addition, Pinyot teaches the combination of multiple non-beverage foodstuffs, which can be vended as a unitary combination as well (column 5, lines 14-16 and column 7, lines 59-62). To therefore the particular conventional compartment of a multiple compartment vendable container that the ordinarily skilled artisan chose to place the sandwich like product would therefore have been an obvious matter of choice and/or design.

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In addition, it is noted that Kirkland also teaches that it has been conventional in the art to vend sandwiches from vending machines (column 1, line 22). Warner further teaches vending sandwiches and a product that complements the sandwich, such as condiments, that are included “for spreading on the sandwich” (Page 2, left column, lines 1-4). Thus, the condiments are still contained and not yet spread onto the sandwich. In any case, Sierk et al. further teaches a separately sealed condiment packet (column 2, lines 20-23 and figure 6, item 5). Kimball and Savage have both been relied on as further evidence that it was conventional to pre-package a sandwich and then vend the sandwich in a vending machine. The art to Warner, Kimball, Savage and Kirkland thus teach that it has been conventional in the art to vend sandwiches, wherein the sandwich is the “main component” of the vended package and to include a complementary product therewith, such as a condiment. In view of the references to Nedblake, Pinyot, Kirkland and Bezek et al. who already teach vending combinations of food products where one product complements the other, since Warner, Sierk et al., Kimball, Savage and Kirkland also teach vending sandwiches as the main product, to therefore place a sandwich in the large compartment of a multiple compartment vendable combination would therefore have been an obvious matter of choice and/or design.

Regarding the particular cylindrical shape, it is noted that Bezek et al. has been relied on as discussed in the previous Office Action mailed October 28, 2008.

Additionally, however, it is noted that Kirkland teaches that it was conventional to vend sandwiches (column 1, lines 21-22) and further teaches placing these varieties of

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conventionally vended products into containers that will facilitate vending in beverage vending machines as well (column 1, line 66 to column 2, line 3). Therefore if one desired to vend a sandwich from a vending machine that dispenses beverages, Kirkland teaches placing the sandwich or any other product, into a cylindrical container.

Regarding the new limitations to claim 6, which recites a second compartment positioned concentrically with and adjacent to the main container portion and being of smaller dimension than said main container portion, it is noted that Nedblake already teaches the concept of a second container that has smaller dimensions than the first container and is positioned concentrically with and adjacent to the main container. Bezek et al. also teaches this concept as shown in figure 9a and 9b, as does Yu in figures 5-5b. To therefore employ concentric compartments would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

Claim 9 newly recites that the main container and the second compartment are comprised of separable compartments separably affixed together for dispensing unitarily. It is noted that Nedblake, Bezek and Yu teach unitary combinations of containers that have been individually sealed and are employed for vending in vending machines, a combination of food products.

Regarding claim 12, which recites that the vendable combination comprises a movable partition member, it is noted that Bezek et al. teaches a movable partition member (figure 9a, items 920 and 925) is are similar to those shown in applicants' figure 4, item 102. Since the art taken as a whole already teaches combination of food products and containers which have been combined to form a vendable combination

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and wherein each of the containers has been sealed, to substitute one conventional structure for the vendable container combination for another conventional structure for a vendable container combination would have been an obvious matter of choice and/or design.

Claim 13 newly recites wherein “one separable compartment being said main container portion which is larger in volume than said other separable compartment.

This has been addressed as discussed with respect to claims 6 and 9, above.

Regarding claims 16 and 17, it is noted that the combination as applied to claims 1 and 10 already teach a combination of food products each separately sealed but placed in combination. Once it was recognized in the art to combine disparate food products, the particular combination of food products to be placed in a vendable combination would have been an obvious matter of choice and/or design.

Regarding claim 23, it is noted that the combination of references, as applied to claims 1-4, 6, 8-11, 13, 16, and 17, already teach the concept of providing, in a vendable combination, two disparate products wherein each of said two disparate products are within a separate sealed container and wherein each of said sealed containers are subsequently joined together to form a unitary combination which is vendable. The combination also teaches the concept of a first compartment having dimensions larger than a second compartment.

Claim 23 newly recites that at least one of the two disparate consumer selected products is a non-food product selected by the purchaser for use or consumption.

It is noted that Pinyot teaches on column 8, lines 2-23 teaches wherein one of the products in one container can be a foodstuff and the other can be a non-food product that can be used by the consumer. Regarding claim 24, it is noted that Pinyot further teaches that the two disparate products are separated. To therefore provide a first food product and a second non-food product in the vendable combination would have been an obvious matter of choice and/or design.

New claim 28 is rejected for the reasons given above with respect to claims 1, 9, 10 and 13. Regarding the shelf-life, it is noted that the claim does not provide any specificity as to what results in the extended shelf life. Nevertheless, it is noted that the limitation "up to three years" means any period of time between 0 and 3 years. Even further it is noted that since the art already teaches vending sandwiches and other food products, it would have been obvious to have ensured that the food products would maintain their freshness for a given period of time, especially since these packaged products are intended to be vended in a vending machine.

**15. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28 above, and in further view of Kaufman (US 5924596) and Nicholls (US 1814180).**

Claim 26 recites wherein at the at least two disparate products are both non-comestible consumer products. It is noted that Kaufman teaches vending a combination of non-comestible products, such as a t-shirt and money. Furthermore, Nicholls has been relied on to teach a combination container, wherein two non-

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comestible products can be maintained in separate compartments which are subsequently combined (page 1, lines 72-78, for instance). Pinyot even teaches that the at least one of the products can be non-comestible and Yu even further teaches that by providing a vendable combination, that this concept can be applied to other industries as well (column 4, lines 47-50). Also, Kirkland further teaches that various food and non-food products which can now be vended in vending machines that vend beverages (column 5, lines 45-52). Therefore, once it was recognized to vend a combination of non-comestible products and was further recognized to keep two non-comestible products in separate containers, the particular product that one chose to place in each of the compartments of the vendable combination taught by the references as applied to claims 1-4, 6, 8-11, 13, 16-17 and 23-24, would therefore have been an obvious matter of choice and/or design to one having ordinary skill in the art.

**16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28, above in paragraph 14 and in further view of Sanford (US 1830246), for the reasons given in the previous Office Action, mailed October 28, 2008.**

**17. Claims 1-4, 6,8, 9-13, 16-17, 23-24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinyot (US 6971521) in view of Nedblake Jr. (US 5664671), Bezek et al., Yu (US 5279841) and Brabson (US 6415940) and in further**



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**view of Kirkland (US 6006945), Warner et al. (US 2384863), Sierk et al. (US 2959339), Kimball (US 20020176914), and Savage et al. (US 20030071036).**

Claims 1-4, 6, 8-11, 13, 16, 17, 23-24 are rejected for the reasons given in the previous Office Action, mailed October 28, 2008. It is noted that claim 12 was not included in the rejection in the previous Office Action, however, upon reconsideration, claim 12 has been rejected for the reasons given below.

Regarding the new limitations to claims 1 and 10, it is noted that Pinyot already teaches varied sizes to each of the compartments of the packaged food product (figure 6 and column 5, lines 4-6). Claims 1 and 10 still differ in the particular food product placed in the main compartment. Nevertheless, it is noted that Nedblake Jr. teaches a sandwich contained in a compartment of a vendable combination and Bezek et al. further teaches a "main compartment" comprising the food product to be consumed, with the smaller compartment comprising a second food product into which the main food product is dipped, for instance (See figure 9b and 9c). Bezek et al. even teaches that the combination can be vended (column 3, lines 47-54) and wherein the shape of the container is cylindrical. Additionally, Yu also teaches that in figures 5a-5b containers that can be vended which also comprises a main compartment and a smaller compartment and wherein the compartments can comprise food or drink (column 6, lines 43-50). Brabson also teaches the concept of packaging multiple non-beverage food products within a container (column 7, line 52 to column 8, line 4). Therefore, the concept of cylindrical containers having a main portion and a smaller portion, as well as cylindrical containers that package sandwich-like products with a second complimentary

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product and cylindrical containers that can package multiple non-beverage products, which are compartmented have all been taught by the prior art. To therefore place a particular conventionally vended food product into a particular compartment, such as a main compartment of a combination would therefore have been an obvious matter of choice and/or design.

Additionally, however, Warner, Sierk et al., Kirkland, Savage et al. and Kimball have been relied on as discussed above in paragraph 14 to teach that it was conventional in the art to vend from a vending machine (which can also vend beverages) a package that comprises a sandwich as the main product and second sealed food item, such as a condiment, which complements the sandwich. In view of the references to Nedblake, Pinyot, Kirkland and Bezek et al. who already teach vending combinations of food products where one product complements the other, since Warner, Sierk et al., Kimball, Savage and Kirkland also teach vending sandwiches as the main product, to therefore place a sandwich in the large compartment of a multiple compartment vendable combination would therefore have been an obvious matter of choice and/or design.

Regarding the particular cylindrical shape, it is noted that Pinyot and Bezek et al. teach cylindrical vendable containers comprising disparate food products. Additionally, however, it is noted that Kirkland teaches that it was conventional to vend sandwiches (column 1, lines 21-22) and further teaches placing these varieties of conventionally vended products into containers that will facilitate vending in beverage vending machines as well (column 1, line 66 to column 2, line 3). Therefore if one desired to

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vend a sandwich from a vending machine that dispenses beverages, Kirkland teaches placing the sandwich or any other product, into a cylindrical container.

Regarding the new limitations to claim 6, which recites a second compartment positioned concentrically with and adjacent to the main container portion and being of smaller dimension than said main container portion, it is noted that Pinyot already teaches the concept of a second container that has smaller dimensions than the first container (figure 6) and is positioned concentrically with and adjacent to the main container. Bezek et al. also teaches this concept as shown in figure 9a and 9b as does Yu in figures 5-5b. To therefore employ concentric compartments would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

Regarding claim 9, Pinoyt already teaches two compartments, each of which have been sealed and have an opening mechanism for opening the sealed enclosure, as shown in the figures, and further wherein both compartments are separably affixed together.

Regarding claim 12, which recites that the vendable combination comprises a movable partition member, it is noted that Bezek et al. teaches a movable partition member (figure 9a, items 920 and 925) which are similar to those shown in applicants' figure 4, item 102. Since the art taken as a whole already teaches combination of food products and containers which have been combined to form a vendable combination and wherein each of the containers has been sealed, to substitute one conventional structure for the vendable container combination for another conventional structure for a

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vendable container combination would have been an obvious matter of choice and/or design.

Claim 13 newly recites wherein “one separable compartment being said main container portion which is larger in volume than said other separable compartment.

This has been addressed as discussed with respect to claims 6 and 9, above.

Regarding claims 16 and 17, it is noted that the combination as applied to claims 1 and 10 already teach a combination of food products each separately sealed but placed in combination. Once it was recognized in the art to combine disparate food products, the particular combination of food products to be placed in a vendable combination would have been an obvious matter of choice and/or design.

Regarding claim 23, it is noted that the combination of references, as applied to claims 1-4, 6, 8-11, 13, 16, and 17, already teach the concept of providing, in a vendable combination, two disparate products wherein each of said two disparate products are within a separate sealed container and wherein each of said sealed containers are subsequently joined together to form a unitary combination which is vendable. The combination also teaches the concept of a first compartment having dimensions larger than a second compartment.

Claim 23 newly recites that at least one of the two disparate consumer selected products is a non-food product selected by the purchaser for use or consumption.

It is noted that Pinyot teaches on column 8, lines 2-23 teaches wherein one of the products in one container can be a foodstuff and the other can be a non-food

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product that can be used by the consumer. Regarding claim 24, it is noted that Pinyot further teaches that the two disparate products are separated.

New claim 28 is rejected for the reasons given above with respect to claims 1, 9, 10 and 13. Regarding the shelf-life, it is noted that the claim does not provide any specificity as to what results in the extended shelf life. Nevertheless, it is noted that the limitation "up to three years" means any period of time between 0 and 3 years. Even further it is noted that since the art already teaches vending sandwiches and other food products, it would have been obvious to have ensured that the food products would maintain their freshness for a given period of time, especially since these packaged products are intended to be vended in a vending machine.

**18. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28 above in paragraph 17, and in further view of Kaufman (US 5924596) and Nicholls (US 1814180).** Claim 26 is rejected for the reasons given above in paragraph 15.

**19. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28, above in paragraph 17 and in further view of Sanford (US 1830246), for the reasons given in the previous Office Action, mailed October 28, 2008.**

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**20. Claims 1-4,6,7-13, 16-17, 23-24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezek et al. (US 6472007) in view of Nedblake Jr. (US 5664671), Yu (US 5279841), Kafentzis et al. (US 6756068) and Brabson (US 6415940) and in further view of Pinyot et al. (US 6971521), Kirkland (US 6006945), Warner et al. (US 2384863), Sierk et al. (US 2959339), Kimball (US 20020176914), and Savage et al. (US 20030071036).**

Claims 1-4,6,7-13 and 16-17 are rejected for the reasons given in the previous Office Action, mailed October 28, 2008.

Regarding the new limitations to claims 1 and 10, wherein a sandwich like product is in the main container portion of the packaged combination, it is noted that Bezek et al. provides the generic teaching of a "main compartment" comprising the food product to be consumed, with the smaller compartment comprising a second food product into which the main food product is dipped, for instance (See figure 9b and 9c). Bezek et al. even teaches that the combination can be vended (column 3, lines 47-54) and wherein the shape of the container is cylindrical. Nedblake Jr. teaches vending a sandwich in combination with a second product. Additionally, Yu also teaches that in figures 5a-5b containers that can be vended which also comprises a main compartment and a smaller compartment and wherein the compartments can comprise food or drink (column 6, lines 43-50). Pinyot also teaches the concept of varying sizes of a combination of vendable food products, as discussed above. As discussed in the previous Office Action mailed October 28, 2008, once it was recognized to vend a combination of conventionally vended food products, the particular combination of food

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products would therefore have been an obvious matter of choice and/or design.

Nevertheless, Warner, Sierk et al., Kirkland, Savage et al. and Kimball have been relied on as discussed above in paragraph 14 to teach that it was conventional in the art to vend from a vending machine (which can also vend beverages) a package that comprises a sandwich as the main product and second sealed food item, such as a condiment, which complements the sandwich. In view of the references to Bezek et al., Nedblake, Pinyot and Kirkland who already teach vending combinations of food products where one product complements the other, since Warner, Sierk et al., Kimball, Savage and Kirkland also teach vending sandwiches as the main product, to therefore place a sandwich in the large compartment of a multiple compartment vendable combination would therefore have been an obvious matter of choice and/or design.

Regarding the particular cylindrical shape, it is noted that Bezek et al. has been relied on as discussed in the previous Office Action mailed October 28, 2008.

Additionally, however, it is noted that Kirkland teaches that it was conventional to vend sandwiches (column 1, lines 21-22) and further teaches placing these varieties of conventionally vended products into containers that will facilitate vending in beverage vending machines as well (column 1, line 66 to column 2, line 3). Therefore if one desired to vend a sandwich from a vending machine that dispenses beverages, Kirkland teaches placing the sandwich or any other product, into a cylindrical container.

Regarding the new limitations to claim 6, which recites a second compartment positioned concentrically with and adjacent to the main container portion and being of smaller dimension than said main container portion, it is noted that Bezek et al. already

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teaches the concept of a second container that has smaller dimensions than the first container (figure 9a and 9b) and is positioned concentrically with and adjacent to the main container. Pinyot also teaches this concept as shown in figure 6, as does Yu in figures 5-5b. To therefore employ concentric compartments would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

Regarding claim 9, Bezek et al. already teach two compartments, each of which have been sealed and have an opening mechanism for opening the sealed enclosure, as shown in the figures, and further wherein both compartments are separably affixed together.

Claim 13 newly recites wherein "one separable compartment being said main container portion which is larger in volume than said other separable compartment. This has been addressed as discussed with respect to claims 6 and 9, above.

Regarding claims 16 and 17, it is noted that the combination as applied to claims 1 and 10 already teach a combination of food products each separately sealed but placed in combination. Once it was recognized in the art to combine disparate food products, the particular combination of food products to be placed in a vendable combination would have been an obvious matter of choice and/or design.

Regarding claim 23, it is noted that the combination of references, as applied to claims 1-4, 6, 8-11, 13, 16, and 17, already teach the concept of providing, in a vendable combination, two disparate products wherein each of said two disparate products are within a separate sealed container and wherein each of said sealed containers are subsequently joined together to form a unitary combination which is



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vendable. The combination also teaches the concept of a first compartment having dimensions larger than a second compartment.

Regarding claim 23, it is noted that the combination of references, as applied to claims 1-4, 6, 8-11, 13, 16, and 17, already teach the concept of providing, in a vendable combination, two disparate products wherein each of said two disparate products are within a separate sealed container and wherein each of said sealed containers are subsequently joined together to form a unitary combination which is vendable. The combination also teaches the concept of a first compartment having dimensions larger than a second compartment.

Claim 23 newly recites that at least one of the two disparate consumer selected products is a non-food product selected by the purchaser for use or consumption.

It is noted that Pinyot teaches on column 8, lines 2-23 teaches wherein one of the products in one container can be a foodstuff and the other can be a non-food product that can be used by the consumer. Regarding claim 24, it is noted that Pinyot further teaches that the two disparate products are separated. Therefore, the particular combination of products that can be placed in the vended container would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

New claim 28 is rejected for the reasons given above with respect to claims 1, 9, 10 and 13. Regarding the shelf-life, it is noted that the claim does not provide any specificity as to what results in the extended shelf life. Nevertheless, it is noted that the limitation "up to three years" means any period of time between 0 and 3 years. Even further it is noted that since the art already teaches vending sandwiches and other food

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products, it would have been obvious to have ensured that the food products would maintain their freshness for a given period of time, especially since these packaged products are intended to be vended in a vending machine.

**21. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28 above in paragraph 20, and in further view of Kaufman (US 5924596) and Nicholls (US 1814180).** Claim 26 is rejected for the reasons given above in paragraph 15.

**22. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-13, 16, 17, 23-24 and 28, above in paragraph 20 and in further view of Sanford (US 1830246), for the reasons given in the previous Office Action, mailed October 28, 2008.**

### ***Response to Arguments***

23. Applicant urges on page 12 of the response that if a close-ended container was employed for the hot dog, that the hot dog would explode due to the moisture content of the hot dog and bun.

24. This argument has been considered but is not persuasive. It is noted that Warner does not teach that the hot dog would explode if a close ended container was employed. Furthermore, as discussed in the previous Office Action, Warner even teaches vending food products employing closed ends to the container. In any case,

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Savage et al. and Kirkland have been relied on as further evidence that it was conventional to vend sealed packaged sandwich products.

25. Applicants' argument that Warner "teaches away from placement of a sandwich like product in a sealed enclosure in order to allow for variances in the size and materials of the sandwich product" has been considered but is not persuasive. It is noted that the claim only recites a sandwich-like product, of which Warner's is a sandwich-like product. The claims further do not recite any limitation of allowing for variances in the size and materials of the sandwich but rather, only recite that the one of the products must be a sandwich. It is further noted that Savage teaches packaged sandwich products that can be vended and heated and Kirkland teaches that it was conventional to vend sandwiches (column 1, lines 21-22) and further teaches placing these varieties of conventionally vended products into containers that will facilitate vending in beverage vending machines as well (column 1, line 66 to column 2, line 3). Therefore if one desired to vend a sandwich from a vending machine that dispenses beverages, Kirkland teaches placing the sandwich or any other product, into a cylindrical container.

26. Regarding the shelf-life of the sandwich, as asserted on page 13 of applicants' response, it is noted that nowhere do the claims recite how one would achieve the extended shelf-life, other than by providing a sealed package. The concept of vending sealed packages of sandwiches has been conventional in the art and to extend their shelf-life up to three years (or between 0 and 3 years) would therefore have been obvious so that upon consumption one would not be eating a spoiled product.

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27. On page 14 of the response, applicants urge that Nedblake fails to teach the arrangement of the sandwich-like product as the principal or main food product of the arrangement. This argument is not persuasive for the reasons given in the rejections above.

28. Applicants urge on pages 16-17 of the response that the packaging and follower taught by Sanford would not allow it to be placed in the round sandwich container taught by Nedblake and would not be usable in the constructions of Bezek, Yu, Brabson or Kirkland. This argument is not persuasive for the reasons given in the "Response to Arguments" section of the previous Office Action, mailed October 28, 2008. That is, Sanford has only been relied on to teach that it has been conventional in the art, to first wrap a sandwich to protect it and then subsequently place into a secondary container.

29. Applicants' arguments regarding the rejections employing Pinyot as the primary reference and Bezek as the primary reference have been considered but are moot in view of the new grounds of rejection set forth above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/V. T./

Examiner, Art Unit 1794

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1794